

Inspection No. 082311AO701

George Joseph
North Star Orchards, LLC
4741 State Route 233
Westmoreland, NY 13490

Inspection Date August 23, 2011

Specialists Narrative:

OPENING CONFERENCE

On August 23, 2011 I conducted announced Certified Applicator Records and Agricultural Use Observation inspections of North Star Orchards, LLC, located at 4741 State Route 233, Westmoreland, NY 13490. I presented my credentials and issued a notice of inspection to Mr. George Joseph, the owner. I explained the purpose of my visit was to check compliance with New York State Laws pertaining to pesticides and the Federal Worker Protection Standard (WPS).

INSPECTION

PESTICIDE CERTIFICATION

Mr. George Joseph (Certification ID# P6249461, category 22, expiration date 10/21/13) is the only certified applicator at the establishment. He stated that he does not have any uncertified individuals working under his certification.

USE OBSERVATION

I asked to see the facility's application records. Mr. Joseph provided me with the records and we reviewed them together. The records that I reviewed were missing the method of application. I reviewed the record keeping requirements with Mr. Joseph at this time.

I recorded the information from an application done on 8/21/11. The record indicated that the application was done with a tank mix of Captan (EPA# 66330-234) and Topsin (EPA# 73545-16-70506). Mr. Joseph stated that this application was done to target sooty blotch and flyspeck. He also stated that the application was applied with a 400 gallon air blast sprayer. Topsin (EPA# 73545-16-70506) was mixed at a rate of ½ pound per acre. The label rate for Topsin is ¾ -1 pounds per acre. After reviewing the label for Topsin, it appears that this rate was in compliance. Mr. Joseph did not have a copy of the label of Captan for me to review at this time. I explained to Mr. Joseph that I would review the label of Captan that is available on the Pesticide Product, Ingredient, and Manufacturer System (PIMS) website when I returned to my office to verify that this application was done according to the label.

Next, Mr. Joseph and I discussed applicator requirements. Mr. Joseph stated that he does keep his certification ID card with him during pesticide use. Mr. Joseph does not keep a label in his possession during use. I explained this requirement to Mr. Joseph at this time. Mr. Joseph understood this requirement and stated that he would comply in the future.

The facility's pesticide storage is located in a barn. The pesticide containers were properly labeled. The pesticide mixing/loading area is located outside of the barn. The water source for the

establishment is well water and there is an effective backflow prevention device. Mr. Joseph also stated that he maintains an air gap when filling his equipment. Pesticide containers are triple-rinsed and disposed of in the dumpster when emptied.

WORKER PROTECTION STANDARD:

We then began the WPS portion of our inspection. Mr. Joseph stated that he is the only handler at this facility. There have been 4 workers at the establishment over the last 30 days. There are 4 permanent workers at this facility. Mr. Joseph stated that there are no seasonal employees at this facility.

I asked to see the facility's Central Posting Area. It was in the packing house outside of an office. The approved poster was taped on the wall and readily visible, and the emergency information was filled in. A record of applications was posted near the poster. The application records were missing the active ingredient of the pesticide, time of application, and restricted entry interval. I explained the requirements with regard to record keeping at the central location at this time.

This facility has not had any pesticide exposure incidents. If there was an incident Mr. Joseph would be responsible for transportation to and information exchange with the medical facility.

Mr. Joseph stated that the workers on the establishment are trained as soon as they are hired and periodically after that. Mr. Joseph stated that he conducts the training for everyone when there is a new hire. He could not produce any documentation to verify the training that he conducts. At this time I discussed the training requirements and the requirement to verify the training with Mr. Joseph. I provided Mr. Joseph with an EPA approved training DVD at this time.

Next I inspected the facility's decontamination areas. Decontamination equipment, which included soap and single use towels, was provided in bathrooms outside of the store. There was also decontamination equipment at the mixing/loading site. Necessary PPE was available.

Mr. Joseph stated that workers are prohibited in treated areas until he allows them to enter. Workers are notified of applications by Mr. Joseph using oral notification. The oral notifications are given to workers in English. Mr. Joseph stated that all of the workers understand English. Mr. Joseph stated that he does not use any pesticides that require double notification.

I was able to conduct a worker interview during this inspection. The worker that I interviewed stated that he was last trained at a Cornell Cooperative Extension offsite. He was aware of where the Central location and application records were located. He stated that he is told by Mr. Joseph where applications have occurred. The worker did not know what a restricted entry interval was. When asked about certain tasks that he has performed regarding pesticides, the worker stated that he had mixed and applied pesticides and repaired sprayers. He later explained that he had mixed and applied pesticides on his own property. He also stated that he had fixed and cleaned the tractors that pull the spray equipment. At this time I discussed the difference between workers and handlers with Mr. Joseph. I also discussed the requirement to train handlers that clean and repair spray equipment. Mr. Joseph stated that the worker only works on the tractor and not the application equipment.

I reviewed the inspection forms with Mr. Joseph and gave him copies of each. Mr. Joseph signed the WPS inspection form and the Inspection Report Cover Sheet. At the end of the

inspection I gave Mr. Joseph a How to Comply manual and copies of Article 33 and 6 NYCRR Part 325.

FOLLOW UP

I checked the registration status of Topsin (EPA# 73545-16-70506) and Captan (EPA# 51036-166) when I returned to my office. I found that Captan (EPA# 51036-166) was no longer a registered product. I discussed this issue with Mr. Joseph during a telephone conversation. Mr. Joseph stated that he would verify the product name and EPA# on his invoices and call me back. Mr. Joseph informed me later that the product that he had used was Captan 50 (EPA# 66330-234). He stated that he must have continued to use the EPA# from the discontinued product instead of recording the new one. I reviewed the label to verify that the application done on 8/21/11 was applied according to the label specifications. Captan was used at a rate of 1 ½ pounds per acre. The label allows for a range of rates between 4-8 pounds /acre. It appears that the observed application rate was in compliance.

After reviewing the label I explained to Mr. Joseph that the label for Captan 50 (EPA# 66330-234) has a statement requiring double notification for workers. This statement means that the applicator must notify workers orally and by using the approved signs at entrances to the application site. Mr. Joseph understood this requirement and stated that he would comply in the future.

CLOSING DISCUSSION

A Notice of Violation will be sent to Mr. George Joseph for the violations discussed in the narrative.



Amy Ortlieb PCS I
Region6

Attachments

Inspection Forms:

Inspection Report Cover Sheet

Notice of Inspection

Pesticide Applicator/Business/Use Inspection

Worker Protection Standard Inspection

Worker Protection Standard Agricultural Worker Interview Questionnaire- Short Version



INSPECTION REPORT COVER SHEET

Inspection #: <u>082311A0701</u>	Name of Person Contacted: <u>George Joseph</u>
Name of Business: <u>North Star Orchards LLC</u>	Official Position: <u>Owner</u>
Street Address: <u>4741 State Route 233</u>	Post Office Address: <u>7315 Merriman Road</u>
City/State/Zip Code: <u>Westmoreland/Ny/13490</u>	City/Village/Township: <u>Clinton /ny/13323</u>
Telephone Number: <u>315-853-1024</u>	County: <u>Oneida</u>

Inspector's Initials	Name of Inspection Form	Form Number
<u>AO</u>	Notice of Inspection	NOI
<u>AO</u>	Pesticide Applicator/Business/Use Inspections	USE
<u>AO</u>	Worker Protection Standard Inspection	WPS
	Liquid Termiticide Use Checklist	TER
	Ornamental and Turf Checklist	T&O
	Voluntary Statement	VOL
	Receipt for Samples	SAM
	Market Place/Restricted Dealers Records Inspection	MKT
	Market Place/Restricted Dealer Records Inspection Continuation Sheet	MPC
	Quarantine Order	QRN
	Quarantine Order Release	QOR
	Experimental Use Permit Checklist	EUP
	Authorization for Medical Record Disclosure	MED
<u>AO</u>	<u>WPS training DVD</u>	
<u>AO</u>	<u>Art 33 & Part 325</u>	
<u>AO</u>	<u>WPS book</u>	

Inspector's Signature: Amy D. [Signature] Number: A07 Date: 8/23/11

Inspection Acknowledgment: I acknowledge receiving a copy of the above listed inspection documents initialed by the inspector.

Signature: [Signature] Date: 8-23-11

Print Name: George Joseph



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DIVISION OF SOLID AND HAZARDOUS MATERIALS • BUREAU OF PESTICIDES MANAGEMENT
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☒ **NOTICE OF INSPECTION**
☐ **USE/MISUSE INSPECTION**

INSPECTION # 082311A0701	DATE 8/23/11	TIME 9:13	<input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	REGION 6
NAME OF INDIVIDUAL George Joseph		TITLE owner		
NAME OF FIRM (Note if corporation, partnership, dba, etc) North Star Orchards LLC				
ADDRESS This is the address of the: <input checked="" type="checkbox"/> INSPECTION SITE <input type="checkbox"/> FIRM <input type="checkbox"/> INDIVIDUAL 4741 State Route 233				
CITY / VILLAGE Westmoreland		STATE ny	ZIP 13490	
TOWNSHIP Westmoreland	COUNTY Oneida	PHONE 315-853-1024		

REASON FOR INSPECTION

- ☒ For the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, samples of any containers or labeling for such pesticides or devices in places where pesticides or devices are produced, or held for distribution or sale.
- ☒ For the purpose of inspecting and obtaining samples of mandated records.
- ☒ For the purpose of inspecting the use of pesticides and sampling pesticides in use to determine if they are being used in compliance with appropriate laws and rules and regulations.
- ☒ For the purpose of inspecting sites where pesticides are being used to collect data on the use of pesticides and to determine whether pesticides are being used in compliance with appropriate laws and rules and regulations.
- ☐ Other

VIOLATION SUSPECTED**none****CONSENT USE/MISUSE**

Voluntary Consent Necessary to Enter for Inspection and/or Sampling.

- ☐ The undersigned hereby voluntarily consents to an inspection of _____ of which I am the owner, Agent, or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of Article 33 and Section 15-0313 of the Environmental Conservation law relating to pesticides. I understand that I have the right to refuse consent to this entry.

SIGNATURE

TITLE

DATE

This inspection is being performed under authority granted by Article 33 and Section 15-0313 of Article 15 of the Environmental Conservation law relating to pesticides and the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq.).

INSPECTOR INFORMATION

NAME Amy Ortlieb	TITLE PCS 1	ID NUMBER A07	PHONE NUMBER 315-193-2516
SIGNATURE Amy Ortlieb	OFFICE LOCATION Utica	ACCOMPANIED BY	



PESTICIDE APPLICATOR/BUSINESS/USE INSPECTIONS

INSPECTION NUMBER 082311A0701		FIRM/FACILITY/PERSON INTERVIEWED George Joseph		EQUIPMENT TYPE/SIZE 400 gal Sprayer 150 gal sprayer	
TYPE OF INSPECTION: <input type="checkbox"/> Business/Agency <input checked="" type="checkbox"/> Applicator <input type="checkbox"/> Non-agricultural use <input checked="" type="checkbox"/> Agricultural use		SITE OF INSPECTION 4741 State Rte. 233, Westmoreland			
BUSINESS REG. NO./EXPIRATION DATE n/a		INSURANCE COMPANY/EXPIRATION DATE n/a			
APPLICATOR NAME/CERTIFICATION TYPE George Joseph / private		CERTIFICATION ID P6249461		CATEGORY/EXPIRATION 22/10/21/13	
				SUPERVISED BY n/a	
DATE/TIME/WEATHER CONDITIONS DURING APPLICATION 8/23/11		CROP Apples		SITE/SIZE 20 acres	
PESTICIDE NAME/EPA REG NO.		METHOD OF APPLICATION		TARGET PESTS sooty blotch flyspeck	
Captan / 51036-1606		Airblast		LABEL RATE TBD	
TOPSIN		↓		OBSERVED RATE 1.5#/acre	
TOPSIN / 73545-16-70506		↓		3/4-1# acre 1/2#/acre	
LABEL/EQUIPMENT REQUIREMENTS		REFERENCE SECTION	Yes	No	NA
Label Rate Followed		325.2(b)			
Target Pests on Label		325.2(b)			
PPE/Cautionary Labeling Followed		325.2(b)	<input checked="" type="checkbox"/>		
Preharvest Interval/REI per Label		325.2(b)			
Crop/Area Treated per Label		325.2(b)			
Pesticide Containers Properly Labeled		33.1301(I)(b)			
Service Containers Properly Labeled		33.1301(I)(b)			
Containers Properly Rinsed and Disposed		325.4(a)	<input checked="" type="checkbox"/>		
Backflow Prevention/Air Gap Present		325.2(c)	<input checked="" type="checkbox"/>		
Proper Stickers on Equipment/Vehicles		325.26			
Equipment Properly Calibrated			<input checked="" type="checkbox"/>		
Storage Locked/Containers Secure				<input checked="" type="checkbox"/>	
Warning Signs Posted			<input checked="" type="checkbox"/>		
Location of Container Disposal: dumpster					
Location of Pesticide Storage: barn					
Water Source: well					
Pesticide Mixing Area: outside barn					
APPLICATOR REQUIREMENTS		REFERENCE SECTION	Yes	No	NA
Apprentices Properly Supervised		325.7(d)			<input checked="" type="checkbox"/>
Apprentices Trained/Documented		325.10(a)			<input checked="" type="checkbox"/>
Apprentice Variance Approved		325.10(b)			<input checked="" type="checkbox"/>
I. D. Card in Possession During Use		325.7(a)	<input checked="" type="checkbox"/>		
Label in Possession During Use		325.2(d)		<input checked="" type="checkbox"/>	
Notification Requirements Met		33-0905(5)			<input checked="" type="checkbox"/>
REPORTS/RECORDS		33-1205(I)	Yes	No	NA
EPA Reg. No.			<input checked="" type="checkbox"/>		
Product Name			<input checked="" type="checkbox"/>		
Quantity			<input checked="" type="checkbox"/>		
Date Applied			<input checked="" type="checkbox"/>		
Address					<input checked="" type="checkbox"/>
Place of Application				<input checked="" type="checkbox"/>	
Dosage Rate			<input checked="" type="checkbox"/>		
Method of Application				<input checked="" type="checkbox"/>	
Target Organism/Crop Treated			<input checked="" type="checkbox"/>		
Records Kept 3 Years			<input checked="" type="checkbox"/>		
REMARKS:					
method of application - air blast sprayer					
threw out Captan container w/ label, check at office					
INSPECTOR'S SIGNATURE Amy Dush		DATE AND TIME INSPECTED 8/23/11 12:03 pm			



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WORKER PROTECTION STANDARD INSPECTION

Inspection # <u>082311A0701</u>		Date: <u>5/23/11</u>		Inspection: <input type="checkbox"/> Unannounced <input checked="" type="checkbox"/> Appointment	
Firm/Farm Name <u>North Star Orchards LLC</u>			Inspection Type: Tier I <input checked="" type="checkbox"/> or Tier II <input type="checkbox"/>		
Type of Establishment: (check all applicable): <input checked="" type="checkbox"/> Farm <input checked="" type="checkbox"/> Greenhouse <input type="checkbox"/> Nursery <input type="checkbox"/> Family establishment <input type="checkbox"/> Research <input type="checkbox"/> Forest					
Approx. total area of establishment: <u>200 acres</u>		Principal crops: <u>apples, tomatoes, grapes, blueberries, xmas trees</u>			
# of certified applicators with establishment: <u>1</u>		Name of person(s) directing/controlling pesticide use: <u>1</u>			
Who applies pesticides? (check all applicable): <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Employee <input type="checkbox"/> Custom Applicator					
Note: For data in this block, estimates provided by the establishment are sufficient.					
# present at this inspection:	workers <u>4</u>	handlers <u>1</u>	# of permanent employees:	workers <u>4</u>	handlers <u>1</u>
1. # present during last pesticide application:	workers <u>4</u>	handlers <u>1</u>	# of seasonal employees:	workers <u>0</u>	handlers <u>0</u>
2. or for the last 30 days: (circle one)					

INFORMATION AT A CENTRAL LOCATION

40 CFR 170.122/135

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Page #

- | | | |
|---|--|----|
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Is the approved SAFETY POSTER displayed? | 23 |
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Is EMERGENCY MEDICAL INFORMATION displayed? (name, address & telephone number) | 24 |
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Is the site LOCATED where it can be readily seen and read by workers & handlers? | 24 |
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Are workers & handlers INFORMED of the location and are they allowed ACCESS to the site? | 24 |
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Does the information remain LEGIBLE while posted? | 24 |
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Is the following APPLICATION INFORMATION displayed? -Location and Description of the treated area; - Product Name; -EPA REG #; <u>Active Ingredient(s) of the pesticide</u> ; <u>Time & Date of application</u> ; <u>REI (restricted entry interval)</u> | 23 |

Comments (explain NA): Circled items not included

PESTICIDE EXPOSURE INCIDENTS/EMERGENCY ASSISTANCE

40 CFR 170.160

- How are incidents reported for employees who become sick/injured by pesticides? Come to George
- | | | |
|---|---|----|
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Is prompt transportation to emergency medical facility available for employees who become sick/injured by pesticides? | 36 |
| _NA_ <input checked="" type="checkbox"/> _Y_ <input checked="" type="checkbox"/> _N | Is information provided to medical personnel regarding the pesticide to which employees may have been exposed? | 36 |

Who is the person responsible for providing transportation and pesticide information? George

☒ _Y_ ☐ _N Have there been any pesticide exposure incidents on this farm? If yes, give details: _____

Comments (explain NA): _____

EMPLOYER/CUSTOM APPLICATOR INFORMATION EXCHANGE ☒ NA (no custom applications) **40 CFR 170.124 & 170.224**

- | | | |
|---|--|----|
| _NA_ <input type="checkbox"/> _Y_ <input type="checkbox"/> _N | Does the ag establishment notify the custom applicator regarding the location of treated areas and REIs? | 34 |
| _NA_ <input type="checkbox"/> _Y_ <input type="checkbox"/> _N | Does custom applicator notify the ag establishment of required application information before the application? | 33 |

How is the information exchanged? When/with whom? _____

PESTICIDE SAFETY TRAINING ASSURANCE

40 CFR 170.130

How to Comply Manual
Page #**WORKERS:** (Applies to workers who are NOT certified applicators or trained handlers)

- ☒ NA ☒ Y ☐ N Does Ag Employer ASSURE that workers have been trained within the last five years? 25
- ☒ NA ☐ Y ☐ N Does Ag Employer ASSURE that workers have been trained *before EARLY ENTRY activities* during an REI? 25
- ☐ NA ☒ Y ☒ N Is the Ag Employer able to VERIFY that the required PESTICIDE SAFETY INFORMATION was provided to workers *before entry into any area on an ag establishment* where WPS pesticides have been applied within the last 30 days? 26
- ☐ NA ☒ Y ☐ N Does Ag Employer ASSURE that workers have received the required ADDITIONAL TRAINING *before the sixth day of entry into any area on an ag establishment* where WPS pesticides have been applied within the last 30 days? 25/26

HANDLERS: (Applies to handlers who are NOT certified applicators or certified crop advisers) 40 CFR 170.230

- ☒ NA ☐ Y ☐ N Does Ag Employer ASSURE that handlers have been trained within the last five years? 25/26
- ☒ NA ☐ Y ☐ N Does Ag Employer ASSURE that handlers have been trained *before performing any handling task*? 25/26

How is training verified for both workers and handlers? not verifiedComments (explain NA): no early entryPESTICIDE SAFETY TRAINING PROGRAM ☐ NA (if workers trained elsewhere) 40 CFR 170.130/230

- ☐ NA ☒ Y ☐ N **WORKERS & HANDLERS:** Is the information presented in a manner that the workers & handlers can understand (such as through a translator & using nontechnical terms & presenter answers questions)? 27
- ☐ NA ☒ Y ☐ N **WORKERS:** Does the PESTICIDE SAFETY INFORMATION meet the criteria listed in 170.130(c)? 26
- ☐ NA ☒ Y ☐ N **WORKERS:** Does the content of the ADDITIONAL TRAINING materials meet the criteria listed in 170.130(d)(4)? 103
- ☐ NA ☒ Y ☐ N Is trainer qualified to train **WORKERS**? (certified applicator or authorized by DEC) 26
- ☒ NA ☐ Y ☐ N **HANDLERS:** Does the content of the training materials meet the criteria listed in 170.230(c)(4)? 104
- ☒ NA ☐ Y ☐ N Is the trainer qualified to train **HANDLERS**? (certified applicator or authorized by DEC) 26

Who trains workers/handlers? George When/how often? when a new employee comes they all get trained again

Comments (explain NA): no handlers

DECONTAMINATION SITES

The employer must adhere to the following decontamination requirements for **WORKERS and HANDLERS:** 40 CFR 170.112/150/250

- ☐ NA ☒ Y ☐ N Do decontamination sites have soap, single-use towels, and enough water for washing & emergency eye flushing? 29-31
- ☐ NA ☒ Y ☐ N Is the decontamination water of a quality & temperature as required? 29
- ☐ NA ☒ Y ☐ N Is one pint of eye flush water immediately available to handlers using pesticides requiring protective eye wear and to early entry workers when working in areas treated with pesticides requiring protective eye wear for early entry? 31/68
- ☐ NA ☐ Y ☐ N Is the decontamination site within 1/4 mile of the work site and out of areas being treated or under REI? 30/31
- ☐ NA ☒ Y ☐ N Are decontamination sites provided for workers entering treated areas until 30 days following expiration of the REI? 29
- (Exception: Pesticides with a four-hour REI require decontamination site for only seven days.)
- ☒ NA ☐ Y ☐ N Are decontamination sites provided for early entry workers during and after early entry? 67/68

The employer must adhere to the following decontamination requirements for **HANDLERS:** 40 CFR 170.250

- ☐ NA ☒ Y ☐ N Is enough water provided to handlers for washing the entire body in case of an emergency? 30
- ☐ NA ☐ Y ☐ N Is one clean change of clothing provided to handlers for use in an emergency? 30
- ☐ NA ☒ Y ☐ N Are decontamination supplies located at the mix/load site? 30/31
- ☒ NA ☐ Y ☐ N Are decontamination supplies for PILOTS kept in the airplane or at the aircraft loading site? 30
- ☐ NA ☒ Y ☐ N Are handler decontamination supplies kept out of treated areas unless they are in enclosed containers? 31
- ☐ NA ☒ Y ☐ N Are decontamination supplies located where handlers remove PPE for washing thoroughly after handling activities? 31

Comments (explain NA):

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ADDITIONAL DUTIES FOR WORKER EMPLOYERS

40 CFR 170.110

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RESTRICTIONS DURING APPLICATIONS

- ☐ NA ☒ Y ☐ N Are workers prohibited in treated areas during application and until REIs have expired? 45
- ☒ NA ☐ Y ☐ N Are workers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 51/52
- ☒ NA ☐ Y ☐ N Are workers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 53-55

no applications in greenhouses

NOTICE OF APPLICATIONS TO WORKERS

40 CFR 170.120

- ☒ NA ☐ Y ☐ N Are all GREENHOUSE applications posted with WPS warning signs? 42
- ☒ NA ☐ Y ☐ N Are workers given BOTH oral and posted notification when required by the pesticide label? 41-44
- ☐ NA ☒ Y ☐ N Are workers given notification of applications (EITHER orally or posted) for other applications? 41-44
- ☐ NA ☒ Y ☐ N Are workers told which method will be routinely used at this firm (oral or posted notification)? - circle one 41

Who notifies workers? George

- ☐ NA ☒ Y ☐ N Have any early entry activities occurred?
- ☒ NA ☐ Y ☐ N Were workers informed of label restrictions re: early entry?

Posted Warning Signs ☒ NA for all

- ☐ NA ☒ Y ☐ N Does the employer use the approved WPS warning signs for posted notification? 42/43
- ☐ NA ☐ Y ☐ N Are the signs posted at all entrances of worker entry to the treated area? 42
- ☐ NA ☐ Y ☐ N Are the signs put up no sooner than 24 hours prior to application? 43
- ☐ NA ☐ Y ☐ N Are the signs removed within three days after the end of the REI? 43
- ☐ NA ☐ Y ☐ N Are the signs posted along the border of any labor camp adjacent to the treated area? 42

Oral Warnings ☐ NA for all

- ☐ NA ☒ Y ☐ N Are oral warnings given in a language (s) understood by workers? 44
- ☐ NA ☒ Y ☐ N Do oral warnings include: 1) location & description of treated area; 2) REI; 3) instructions not to enter during the REI? 44

Comments (explain NA): _____

ADDITIONAL DUTIES FOR HANDLER EMPLOYERS

APPLICATION RESTRICTIONS & MONITORING

☒ NA if no handlers employed **40 CFR 170.210**

- ☐ NA ☐ Y ☐ N *Do both the employer & the handler assure that no pesticide is applied (either directly or through drift) so as to contact anyone other than trained and PPE-equipped handlers: 73
- How is this verified? _____
- ☐ NA ☐ Y ☐ N Are handlers monitored visually or by voice every two hours when handling SKULL & CROSSBONES pesticides? 73
- ☐ NA ☐ Y ☐ N Does the handler have a continuous visual or voice contact with another trained and PPE-equipped handler when handling a FUMIGANT in a GREENHOUSE? 73/74

SPECIFIC INSTRUCTIONS FOR HANDLERS

☐ NA if no handlers employed **40 CFR 170.232**

- ☐ NA ☐ Y ☐ N Does the employer assure that handlers read the label or are informed (in a manner they can understand) about the label requirements for safe use before performing any handling activity? 75
- ☐ NA ☐ Y ☐ N Does the handler have access to the product labeling during handling activities? 75

SAFE OPERATION OF EQUIPMENT

☐ NA if no handlers employed **40 CFR 170.234**

- ☐ NA ☐ Y ☐ N Is the handler instructed in the safe operation of handling equipment before it is used? By whom? _____ 75
- ☐ NA ☐ Y ☐ N Is handling equipment inspected and repaired before each day of use? 77
- ☐ NA ☐ Y ☐ N Does the employer assure that only trained and PPE-equipped handlers repair, clean or adjust any handling equipment that contains pesticides or pesticide residues? 77

Comments (explain NA): _____

PERSONAL PROTECTIVE EQUIPMENT REQUIREMENTS FOR HANDLERS/EARLY ENTRY WORKERS**40 CFR 170.112/240**

- ☒ NA ☒ Y ☐ N Does the employer provide the handler/early entry workers with the appropriate PPE in clean and operating condition? 79
- ☐ NA ☒ Y ☐ N Does the employer assure that instruction on use and cleaning of PPE is given and that it is worn and used correctly? 79
- Who gives instructions and assures use of PPE? George
- ☐ NA ☒ Y ☐ N Does the employer assure that PPE is inspected, cleaned, stored properly & repaired or replaced before each day of use? 79
- ☐ NA ☒ Y ☐ N Does the employer assure that filters are replaced on respirators when required? 80
- ☐ NA ☒ Y ☐ N Do handlers/early entry workers have a clean place to store personal clothing, put on PPE and remove PPE after use? 79
- Where is it located? barn
- ☐ NA ☒ Y ☐ N Is contaminated PPE disposed of properly? 79
- ☐ NA ☒ Y ☐ N Does the employer take appropriate measures to prevent heat-related illness for handlers/early entry workers using PPE? 79
- ☒ NA ☐ Y ☐ N Have handlers refused to wear proper PPE?

From labels of agricultural pesticides documented in an accompanying AUO inspection, list the following (for up to 4 products):

	Product Name	REI	PPE
1	<u>Topsin</u>	<u>2 days</u>	<u>Coveralls, chemical resistant gloves, footwear, headgear</u>
2	<u>Captan</u>		<u>for overhead</u>
3			
4			

If the label for any of the above products does not include agricultural use requirements - state so above.

Comments (explain NA): no early entry**WORKER AND HANDLER INTERVIEWS**

- ☒ Y ☐ N Were any workers or handlers interviewed? (circle which were) If no for either, explain why an interview was not conducted.

FAMILY ESTABLISHMENTS**40 CFR 170.104/110/112/124/224/240**

- ☐ NA ☒ Y ☐ N Are employees only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, sisters? 91
- If NO, skip this section.
- ☐ NA ☐ Y ☐ N Are non-handlers prohibited in treated areas during application and until REIs have expired? 92
- ☐ NA ☐ Y ☐ N Are non-handlers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 92
- ☐ NA ☐ Y ☐ N Are non-handlers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 92
- ☐ NA ☐ Y ☐ N Are early entry workers prohibited in treated areas during the first four hours after application? 93
- ☐ NA ☐ Y ☐ N Are early entry workers limited to one hour of work in a 24-hour period in treated areas during the REI? 93
- ☐ NA ☐ Y ☐ N Are early entry workers who perform irrigation and limited contact activities limited to eight hours of work in a 24-hour period? 93
- ☐ NA ☐ Y ☐ N Is the correct PPE for early entry PROVIDED for early entry activities at this firm? 93
- ☐ NA ☐ Y ☐ N Does the handler at this firm wear the label-specified PPE during handling tasks? 92
- ☐ NA ☐ Y ☐ N Is the label-specified PPE for handling activities at this firm PROVIDED in clean and operating condition? 92
- ☐ NA ☐ Y ☐ N Does this establishment notify commercial handlers regarding location of treated areas and REIs on the establishment? 92
- ☐ NA ☐ Y ☐ N Do commercial handlers notify this establishment of required application information before application takes place? 92

Comments (explain NA):

Additional Comments:

Print name of inspector <u>Amy Ortlieb</u>	Print name of person interviewed <u>George Joseph</u>
Signature of inspector <u>Amy Ortlieb</u>	Signature of person interviewed <u>George Joseph</u>

**WORKER PROTECTION STANDARD
AGRICULTURAL WORKER INTERVIEW QUESTIONNAIRE - SHORT VERSION**

Inspection # (if interview related to an inspection):	082311A0701
Name of Establishment:	North Star Orchards LLC
Date of Interview:	8/23/11
# of Workers Interviewed:	1
Were Workers accompanied by employers during interview?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Interview Conducted	<input checked="" type="checkbox"/> onsite <input type="checkbox"/> offsite

PESTICIDE SAFETY TRAINING

1. Did you receive pesticide safety training? ☒ Yes ☐ No

If yes, what type of training did you receive?

☒ movie ☐ flip chart (bring a picture of a flip chart) ☐ lecture ☐ handbook

2. Was the training in your native language? ☒ Yes ☐ No

3. Where did you receive the training? CCE, none on site

4. When did you receive the training? ☒ During work ☐ At lunch ☐ After work?

5. Was an interpreter available during the training? ☒ Yes ☐ No

6. Do you know who trained you? ☐ Yes ☒ No

If yes, who? CCE agent

7. When you were trained, were you taught about how to wear special clothes (PPE) such as gloves, boots, coveralls, mask) ☒ Yes ☐ No

8. When you were trained, were you taught about heat stress (eg. how to know when you've been in the heat for too long, how to avoid heat stress or what to do if you feel sick from it)? ☒ Yes ☐ No

9. (Show sample worker ID card) Were you given a card like this to show that you were trained?
☐ Yes ☒ No

10. (Show the safety poster) Where is the safety poster located? in store

11. (Show an example of application records) Has anyone ever showed you where these records are kept?
☒ Yes ☐ No If yes, where are they located? in barn, in office

NOTIFICATION

12. Do you know where the signs are posted about pesticides that have been used recently?

☒ Yes ☐ No

If yes, where? _____

13. Are you told about areas that have been treated with pesticides? ☒ Yes ☐ No

How are you told? _____ Signs ☒ Oral warning _____ Both

14. Who tells you when you get oral warnings? George

Is it the same person that posts the signs? ☐ Yes ☐ No Na

When do they post them? _____

15. Are signs and oral warnings in your native language? ☒ Yes ☐ No

(Inspector note how warnings are communicated to non-English speaking workers: _____)

16. (Show warning REI sign.) Do you understand what this sign means? ☐ Yes ☒ No

If yes, do you pay attention to the warning signs and not enter or cross the fields? ☐ Yes ☐ No Doesn't know REI

17. Are you told when to stay out of treated areas? ☒ Yes ☐ No

18. Are the labels for the pesticides available for you to read? ☒ Yes ☐ No

A. Are the labels in a language you can understand? ☒ Yes ☐ No

B. Where is this information? Closet next to storage area

C. Is this information always available to you? ☒ Yes ☐ No

DECONTAMINATION SUPPLIES

19. Is there ☒ water ☒ paper towels ☒ soap, available all day? If so, where? at store and at storage area

Is this location more than 1/4 mile from the work site? ☐ Yes ☒ No (Inspector verify, if worker does not know.)

EARLY ENTRY

20. Have you ever entered a field or an area of a greenhouse soon after you saw a pesticide being sprayed or were you ever told to enter such an area soon after a pesticide was used? ☐ Yes ☒ No

A. If yes, were you given special clothing to wear? ☐ Yes ☐ No

B. If you did enter such an area, why? _____

HANDLER TASKS

21. In the past year, have you ever worked with pesticides to do any of the following?

✓ Y/N	mixing pesticides	adding to pesticide sprayers	applying pesticides to crops	repair or clean a pesticide sprayer	other activity (briefly describe)
Yes	✓	✓		✓	
No	✓	✓	✓		✓

If yes, were you trained in doing that work before you did it? ☐ Yes ☐ No

EXPOSURE INCIDENTS

22. Have you ever felt as though pesticides/poisons have made you sick after working in the fields?
☐ Yes ☒ No

If yes, what were your symptoms? _____

23. Were you ever directly sprayed/dusted by pesticides? ☐ Yes ☒ No

If yes, approximately when and how did this happen? _____

24. Do you take pesticide containers home with you? ☐ Yes ☒ No

A. If yes, what do you use them for? _____

B. Are chemicals ever in the containers? ☐ Yes ☐ No

EMERGENCY ASSISTANCE

25. Do you know where to go on your farm/greenhouse to get information about the closest hospitals/clinics (facility's name, phone number, address)? ☒ Yes ☐ No

A. Where is the information? Safety Poster

B. Is this information always available? ☒ Yes ☐ No

26. Do you know who to contact on the farm/greenhouse if you have a medical emergency while working? ☒ Yes ☐ No

27. Do you know who would take you to the hospital/clinic if you were sick from pesticides? ☒ Yes ☐ No

28. How do you or the employer report pesticide-related illnesses? _____

RETALIATION

29. Have you ever been told to do something with pesticides on the farm (greenhouse, etc) that you thought you should not do? ☐ Yes ☒ No

30. Are you always able to do what is needed, like wear special clothing or know about pesticides used, without the employer stopping you from doing those things? ☒ Yes ☐ No

31. Have you ever complained about something relating to pesticides and your work at the farm/greenhouse and been threatened to be fired? ☐ Yes ☒ No



Joe Martens
Commissioner

NOTICE OF VIOLATION

September 16, 2011

Mr. George Joseph
North Star Orchards, LLC
7315 Merriman Road
Clinton, NY 13323

Dear Mr. Joseph:

I am contacting you regarding violation(s) of the Environmental Conservation Law (ECL) recently documented by the New York State Department of Environmental Conservation (the Department).

The Department is responsible for the administration and enforcement of laws and regulations pertaining to pesticides in the state of New York, including Articles 15, 33 and 71 of the ECL and Parts 320-329 of Title 6 of the Official Compilation of Codes, Rules and Regulations of New York State ("6 NYCRR"), and has the authority to inspect under FIFRA 12(a)(2)(g) and the Code of Federal Regulations ("40 CFR 170") related to the Federal Worker Protection Standard ("WPS").

ENFORCEABLE PROVISIONS OF LAW

Recordkeeping:

1. **Article 33, Section 33-1205** states: (2)(b) All private applicators shall maintain, at a minimum, records of the restricted pesticides purchased, crop treated by such, method of application, and date of application or applications. This information shall be maintained on an annual basis and retained for a minimum of three years, and shall be available for inspection upon request by the department.
2. **6 NYCRR Part 325, Section 325.25** states: (d) The private applicator shall maintain a record on forms to be provided by the department of the restricted use pesticides purchased, the crop treated by such, their method of application, and the date of their application or applications. This information shall be maintained on an annual basis and retained for a minimum of three years, and shall be available for inspection upon request by the department.

Pesticide Use Requirements:

1. **6 NYCRR Part 325, Section 325.2** states: (d) During pesticide use, the certified applicator, certified technician or commercial pesticide apprentice must have in their custody a copy of the label for each pesticide being used. The certified applicator, certified technician or commercial pesticide apprentice must make each label available for inspection upon request of the department.
2. **6 NYCRR Part 325, Section 325.2** states (b) Pesticides are to be used only in accordance with label and labeling directions or as modified or expanded and approved by the department.

This includes label directions associated with the Worker Protection Standard- Section 170 of Title 40 of the Code of Federal Regulations.

40 CFR, Section 170.120 states: (b) *Notification to workers on farms, in nurseries, or in forests of pesticide applications.* The agricultural employer shall notify workers of any pesticide application on the farm or in the nursery or forest in accordance with this paragraph.(1) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall post signs in accordance with paragraph (c) of this section and shall provide oral notification of the application to the worker in accordance with paragraph (d) of this section.

40 CFR, Section 170.130 states: (a) *General requirement—(1) Agricultural employer assurance.* The agricultural employer shall assure that each worker, required by this section to be trained, has been trained according to this section during the last 5 years, counting from the end of the month in which the training was completed.

e) *Verification of training.* (1) Except as provided in paragraph (e)(2) of this section, if the agricultural employer assures that a worker possesses an EPA-approved Worker Protection Standard worker training certificate, then the requirements of paragraph (a) and (c) of this section will have been met.

40 CFR, Section 170.122 states: When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(c) *Required information.* The information shall include:(1) The location and description of the treated area.(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.(3) The time and date the pesticide is to be applied.(4) The restricted-entry interval for the pesticide.

VIOLATIONS DOCUMENTED BY THE DEPARTMENT

On or about August 23, 2011, in the town of Westmoreland, Oneida County, New York, George Joseph (Respondent), individually and as the owner of North Star Orchards LLC., was in violation of the Environmental Conservation Law (ECL) 33-1205(2)(b) and 6NYCRR Part 325.25(d) in that the Respondent failed to maintain true and accurate records of pesticide applications. Specifically, the Respondent failed to record method of application and failed to accurately record pesticide information for Captan 50 (EPA No. 66330-234). Respondent recorded the EPA number as 51036-166.

On or about August 23, 2011, in the town of Westmoreland, Oneida County, New York, George Joseph (Respondent), individually and as the owner of North Star Orchards LLC., was in violation of 6NYCRR Part 325.2(d) in that the Respondent failed to have a copy of the pesticide label in his custody during use; and Respondent failed to provide a copy of a label to the Department upon request. Specifically, Respondent was unable to provide a copy of the label for Captan (EPA# 66330-234).

On or about August 23, 2011, in the town of Westmoreland, Oneida County, New York, George Joseph (Respondent), individually and as the owner of North Star Orchards LLC., was in violation of 6 NYCRR 325.2(d) in that Respondent failed to follow label directions regarding the Worker Protection Standard (40 CFR).

Respondent was in violation of 40 CFR 170.120(b) in that Respondent failed to notify workers orally and with posted warnings when a label required it.

Respondent was in violation of 40 CFR 170.130(a) and 40 CFR 170.130(e) in that Respondent failed to provide verification that workers have been trained within five years.

Respondent was in violation of 40 CFR 170.122(c) in that Respondent failed to record the active ingredient of the pesticide, time of application, and restricted entry interval.

Pursuant to ECL §33-1501 of the ECL, you are, hereby, advised to cease and desist from further violation of any provision of ECL Article 33 and any rules and regulations promulgated pursuant thereto.

PLEASE TAKE NOTICE THAT:

ECL §71-2907 provides administrative, civil, and criminal sanctions for addressing violations of the ECL and the rules and regulations promulgated pursuant thereto.

Mr. George Joseph
North Star Orchards LLC.
September 16, 2011

ECL §71-2907(1) provides that any person who violates any provision of ECL Article 33 or any rule, regulation or order issued thereunder, or commits any offense described in ECL §33-1301 shall be liable for a civil penalty not to exceed \$5,000 for a first violation and not to exceed \$10,000 for a subsequent offense.

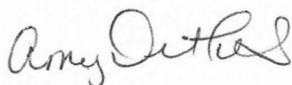
ECL §71-2907(3) provides that any person who violates any provision of ECL Article 33 or any rule or regulation thereunder, except relating to the application of a general use pesticide and having the requisite state of mind, is guilty of a misdemeanor punishable by a fine of up to \$5,000 per day for each day during which the violation continues or imprisonment for up to one year or both.

ECL §33-0909 and 6NYCRR Part 325.18(d) provide criteria for suspending, revoking, or otherwise modifying a commercial pesticide applicator certificate. ECL §33-0909 and 6 NYCRR Part 325.23(e) provide reasons for suspending, revoking, or otherwise modifying a business registration certificate.

Among such criteria presented in ECL §33-0909 and 6 NYCRR, Parts 325.18(d) and 325.23(e), is the failure to comply with any provision of ECL Article 33 or the rules and regulations promulgated pursuant thereto.

PLEASE ALSO BE ADVISED THAT this case file has been forwarded to our regional Office of General Counsel for further enforcement action. Someone from their office will contact you to discuss the violations documented above.

Sincerely,



Amy Ortlieb
Pesticide Control Specialist I

kt

attachments

cc: Peter Taylor
Randall Young

Inspection file: North Star Orchards
4741 State Route 233
Westmoreland, NY 13490